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ABSTRACT

This paper, one of a series of topic papers assessing federal laws and programs affecting persons with disabilities, addresses the issue of housing. Major federal responsibilities are to develop additional housing opportunities for persons with disabilities and to assure that currently available housing is equally open to individuals with disabilities. Described are the federal housing assistance and loan programs authorized in Section 202 of the Housing Act of 1959 (as later amended), Section 8 of the U.S. Housing Act of 1937, Section 207 of the Housing and Urban-Rural Recovery Act of 1983 which established the Housing Voucher Demonstration Program, and the Community Development Block Grant Program. Laws and proposed regulations prohibiting discrimination in housing on the basis of disability are reviewed. The need for a federal prohibition of discriminatory zoning in local ordinances is also documented. Costs and benefits of providing appropriate housing for people with disabilities are considered. The paper concludes with recommendations designed to prohibit housing discrimination and to promote appropriate and accessible housing for persons with disabilities. (JDD)

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TOPIC PAPER F:

HOUSING

National Council on the Handicapped

February, 1986

EC 211 763

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This is one of a series of ten topic papers developed by the National Council on the Handicapped as part of its Special Report to the President and Congress: TOWARD INDEPENDENCE: An Assessment of Federal Laws and Programs Affecting Persons with Disabilities--With Legislative Recommendations. The members of the National Council on the Handicapped wish to expressly acknowledge with appreciation the special contribution made to this paper by Robert L. Burgdorf Jr. and Janet Anderson.

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I. OVERVIEW

Housing is a fundamental requirement for living independently. An acute lack of housing opportunities for persons with disabilities severely impedes the social integration and independence of disabled Americans. The shortage of appropriate housing options, long apparent to many handicapped individuals, service agencies, and professionals, was recognized by the White House Conference on Handicapped Individuals in 1977 and has been documented in the few formal studies of the subject. A 1981 report of the United States General Accounting Office observed:

> Although no reliable statistics exist on the number of accessible housing units in the United States, officials of the Departments of Education, HHS, HUD, and some national organizations serving people with handicaps told GAO that accessible units are in short supply.
> (GAO, 1981)

Housing Needs of the Handicapped, a March 1982 report of the Department of Housing and Urban Development (HUD), initiated at the direction of the U.S. Congress, acknowledged the unmet housing needs of people with disabilities and concluded that the extent of such needs had not yet even been assessed, much less addressed (HUD, 1982).

HUD is currently pursuing a number of initiatives to redirect the focus of Federal housing programs. This paper suggests means by which the redirection of Federal housing programs affecting people with disabilities may be most effectively accomplished. In addition, the paper offers suggestions for the expansion and improvement of laws

guaranteeing fair and equal housing opportunities for persons with disabilities. President Reagan has endorsed the concept of extending the coverage of housing nondiscrimination laws to protect persons with disabilities, and has indicated that such expanded coverage is supported by "a clear consensus of the Congress" (President Reagan, 1983, p. 992).

Federal housing programs and laws which assure equal access to housing reflect a far-sighted, astute use of Federal resources, because they help to avoid the costly institutionalization of persons with disabilities. Available data (to be discussed in part IV of this paper) suggest that the costs of providing appropriate housing options for people with disabilities are not substantial when compared to the significant savings engendered by enabling individuals with disabilities to live in the community, get jobs, and pay taxes.

II. FEDERAL HOUSING ASSISTANCE AND LOAN PROGRAMS

The Federal Government has played a major role in seeking to provide adequate housing for elderly people and individuals with disabilities since 1959, when Section 202 of the Housing Act of 1959 was enacted. Today, an amended version of Section 202 is the only Federal housing legislation that explicitly mentions persons with disabilities as a targeted class for housing opportunities. Certain other Federal housing programs, however, including the traditional Section 8 Program, the Administration's housing voucher program, and community development block grants, have been used to provide additional housing options for persons with disabilities, even though disabled persons are not expressly mentioned in the statutes authorizing these programs.

A. Section 202

Section 202 of the Housing Act of 1959 authorized direct, low-interest loans for housing for elderly persons. In 1964, Section 202 was amended to include handicapped persons and their families. From 1959 until it was temporarily phased out in favor of other programs, this direct loan program provided construction financing and 50-year permanent loans at 3 percent interest to nonprofit and limited-dividend sponsors of housing for low and moderate income elderly people. The program prompted the construction of over 45,000 units in its 10 years of operation. This early Section 202 program was considered to be a great financial success -- only one of approximately each 30 loans had to be foreclosed. It was also a popular program among elderly people. The program was phased out, however, largely in favor of

construction financed by the Section 236 program, another HUD mortgage subsidy program.

The Housing and Community Development Act of 1974 (P.L. 93-383) amended the Section 202 program to permit construction loans and direct 40-year permanent financing to nonprofit sponsors for the construction or substantial rehabilitation of housing projects for elderly or disabled persons. As further amended in 1976, the loans were made at a rate based on the average interest rate of all interest-bearing obligations of the United States which form a part of the public debt, plus an amount to cover administrative costs. The Secretary of HUD was authorized to borrow funds for this program from the Treasury Department, where a revolving loan fund for housing of elderly and disabled persons had been established.

An important aspect of the revised Section 202 program was the requirement that all projects receiving the long-term loans must qualify for, and would receive the benefits of, leased housing assistance payments under the Section 8 program (to be discussed below). This means that eligible tenants would not pay more than 25 percent of their incomes for rent, and that developers would be virtually assured a pool of federally subsidized tenants. To guarantee the availability of such funding, reservations of Section 8 funds were set aside at the time that Section 202 funds were reserved for a project.

The Housing and Community Development Act was signed into law in 1974, but final regulations for the Section 202 program were not issued until February 25, 1976. Potential sponsors,

including small nonprofit community groups and churches, claimed it would be extremely difficult to obtain long-term financing due to the special provisions of the leasing program. At that time, HUD Section 8 housing assistance payments for tenants were provided for a period not exceeding 20 years whenever private financing was used. Under these circumstances, financial institutions were wary of offering 40-year financing. An alternative would have been Federal Housing Administration (FHA) multi-family insurance, but some housing sponsors pointed out that even if FHA insurance were obtained and long-term financing located, points charged by lenders would have priced many nonprofit organizations out of the market. Strong opposition from these potential sponsors led to a Congressional mandate that HUD rescind the initial regulations and implement the program in a manner that would assure permanent financing.

The record of the original Section 202 program provides a useful backdrop against which to assess the progress and accomplishments of the revised program. The original program appears basically to have served a middle income group of elderly persons with yearly incomes at that time of $5,000 to $7,000. No asset limits were imposed. The revised program serves persons with a wider range of incomes, since it is used in conjunction with the Section 8 program, which is currently HUD's major vehicle for providing housing to low-income households. Eligible households are those with incomes under 80 percent of the median in their area, adjusted for family size. Higher income households may live in such projects if they pay market rate rent.

As of December 31, 1984, there were approximately 2,257 Section 202 projects nationwide, with 142,120 occupied housing units. In 1985, $600 million was appropriated for 12,000 additional units of Section 202 housing. Beginning in 1986, as part of the President's spending freeze aimed at reducing the Federal budget deficit, his budget proposes a 2-year moratorium on new assisted housing production. As a result, no new funding for Section 202 has been recommended in the budget, with the exception of a $50 million loan limitation to support approved projects already in the pipeline.

HUD has also begun the selling of Section 202 mortgages to private sector buyers, with the understanding that the investor continue to offer low-cost housing services that meet Section 202 regulations and guidelines to elderly and disabled people. In addition, the investor must continue Section 8 certificates to tenants as under the Section 202 program.

The administration of the Section 202 program has engendered some problems. Approval of Section 202 loans has sometimes involved long delays. One reported incident concerned a Fairfax, Virginia group that waited for more than two years for approval of a loan application for a housing unit for disabled persons (Specter, M., Wasington Post, April 15, 1985). The Section 202 application and approval procedures, primarily developed with large high-rise projects in mind, have proven inadequate and cumbersome as applied to smaller housing alternatives such as group homes for people with disabilities.

In its Section 202 Handbooks, HUD has imposed upon Section

202 borrowers a requirement that they must provide a "support service" component designed to meet the "special needs" of the clientele they propose to serve. Although intended as a protection for handicapped residents of Section 202 programs, the support service requirement has become an eligibility restriction, allowing developers to refuse to rent to any disabled person who does not have the specified disabling condition. In a New York case, two developmentally disabled persons were denied admission to a Section 202 program that had been established for elderly and mobility impaired persons, even though they argued that they were capable of living independently and needed no special services from the housing facility (Brecker v. Queens B'nai B'rith Housing Dev. Fund, 607 F.Supp. 428 (E.D.N.Y. 1985)). Similarly, in a New Jersey lawsuit, mentally ill persons complained that they had been denied admittance to a Section 202 program because of their disability (Edge v. Pierce, 540 F.Supp. 1300 (D.N.J. 1982). HUD has supported the approach of housing developers who argue that they may refuse admittance to all disabled people who are not members of the targeted groups (Ratner, 1985).

The HUD Section 202 Handbook sets unit limits in the development of housing for chronically mentally disabled persons. HUD calls for projects that are designed exclusively for chronically mentally ill individuals and may provide group homes for up to 15 to 20 people. In addition, HUD policy requires that both group homes or independent living residences must be on scattered sites, and specifies that shared living arrangements require a variety of support or assistance that may take the form

of resident house parents, supervisors, attendants, or live-in aides. Such support services or assistance may be funded under Title XX of the Social Security Act. The listing of such support assistance for mentally disabled persons in the Section 202 Handbook evidences a HUD expectation that such persons not be housed in HUD-funded projects other than those projects targeted for their specific disabilities.

While disability specific housing may be motivated by good intentions to secure support services necessary to permit persons with certain disabilities to live together in HUD-funded projects, the overall impact of Section 202 programs is often contrary to concepts of integrated and independent living for individuals with disabilities. Many Section 202 projects serve to isolate younger persons with disabilities from other persons of the same age, as placement is often in housing developments that are otherwise only for elderly people. And disability specific housing often means the segregation of all people with disabilities in a particular wing or building.

Disability specific programs may sometimes serve legitimate purposes as a means of partial community integration for certain people with disabilities who require support programs or supervision. Such housing should be an option for people with disabilities who wish to reside together in the same project, building, or wing. But apart from such personal choices and programmatic requirements, many people with disabilities are unnecessarily segregated from their nondisabled peers, and do not become socially integrated in their communities as a result of

being a tenant in a Section 202 housing unit

B. Section 8 -- Lower Income Rental Assistance

1. The Traditional Section 8 Programs. Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f) created a program to aid low and very low income families, including persons with disabilities, to obtain decent, safe, and sanitary housing in both private accommodations and Section 202 housing projects. Section 8 contains a requirement that HUD make up the difference between what a low or very low income household can afford and the fair market rent for an adequate housing unit. Eligible tenants must pay the highest of: 30 percent of adjusted income, 10 percent of gross income, or the portion of welfare assistance designated to meet housing costs. Housing subsidized by HUD under Section 8 must meet certain standards of safety and sanitation, and rents must fall within a range of fair market rents as determined by HUD.

Traditionally, Section 8 assistance was made available through several different HUD programs addressing various types of housing development. The Section 8 Existing Housing (Certificate) Program was applicable to provide rental assistance for tenants in existing housing. The Section 8 New Construction or Substantial Rehabilitation Housing Assistance Program provided rental assistance for newly constructed or rehabilitated housing. Although the Section 8 program is still available to existing Section 202 and non-202 housing, this type of rental assistance is currently not being provided for new Section 202 construction

or substantial rehabilitation projects. By the end of Fiscal Year 1983, a total of 1,760,216 housing units were receiving subsidies under the Section 8 program (Programs of HUD, 1984). The average Section 8 certificate in 1985 was $7,121 per unit in a Section 202 project.

2. The Voucher Program. The Housing Voucher Demonstration Program is a demonstration or pilot project that provides low to very low income individuals or families, including people with disabilities, an income supplement for housing. It allows assisted families or individuals to seek housing in the open market. Congress authorized this demonstration project in 1983 in Section 207 of the Housing and Urban-Rural Recovery Act of 1983 (Public Law No. 98-181).

The voucher program modifies and builds on the Section 8 Existing Housing Program. Both programs utilize the existing housing stock already available in a community, thus sheltering a greater number of tenants on a less costly basis than new construction programs. The free market characteristics of the programs allow tenants a greater choice of units and communities, and furthers individual selection in avoiding social and racial segregation. Vouchers and certificates can serve to open a greater portion of the community to low income residency.

The voucher program is basically straightforward:

- The voucher is issued by a local public housing authority to a family or an individual eligible for housing assistance.
- The voucher allows the family or person with a disability to shop for decent, safe, and sanitary rental housing and guarantees payment to the landlord of a portion of the rent.

- HUD pays the difference between 30 percent of a family's adjusted gross income and a reasonable rent level for a given area.

- The subsidized family or person with a disability has an additional "shopping incentive" that allows it to balance cash resources with housing goals. The family may rent below the payment standard (set at the 45th percentile of an area's median rents) and pocket the savings, or it is free to spend more if it so chooses.

The voucher program appears to be less costly than some previous approaches. In Fiscal Year 1982, the Federal Government provided $4.9 billion in Section 8 New Construction budget authority to subsidize families in 33,000 low-income housing units. It is estimated that the same amount of budget authority would have provided 325,000 households with assistance through vouchers. Based on this comparison, the voucher subsidy appears nearly 10 times as effective than the Section 8 New Construction Program on a purely numerical basis. The contrast is even more dramatic when one focuses on households identified as "worst case" families with the most need for housing assistance. The 33,000 units developed under the New Construction Program can serve only 4 percent of the "worst case" families, and the aid only arrives after a 12-month to 24-month construction period. On paper, vouchers could have aided 40 percent of the "worst case" families, and would have provided assistance much more quickly than by building new units.

3. Improving Rental Assistance Programs. Neither the traditional Section 8 Programs nor the newer Voucher Program is a total panacea; each can and should be improved to provide more effective housing assistance to low income families, especially

those having family members with disabilities. To guarantee that housing assistance flows to individuals and families with the greatest need, HUD has directed that most future assistance be targeted to families with incomes at or below 50 percent of an area's median income. In addition, the Department has made a special effort to target housing assistance to households that have had particular difficulty in participating in HUD's programs in the past. Large families and people with disabilities traditionally have had difficulty in locating units appropriate for their needs. HUD has adjusted its fair market rents for its Section 8 Existing Housing Program to allow higher rents for apartments with three or more bedrooms. Higher rents should motivate some owners of large units to participate in the Section 8 Existing Housing Program. In addition, a new Rental Rehabilitation Program and a Housing Development Grant Program will assign a high priority of funding projects that contain units with a large number of bedrooms (The President's National Urban Policy Report, 1984).

The effectiveness of rental assistance programs is largely dependent upon the degree to which they reflect a realistic appraisal of the rental housing market. Some landlords will not accept tenants who are dependent upon public housing assistance. In areas where there is an insufficient supply of adequate housing at affordable prices, the monetary level of rental subsidies under Section 8 Existing Housing and Vouchers Programs may force recipients to reside in substandard, inappropriate units. This problem is all the more severe for individuals with disabilities who need to find housing that is both affordable and

accessible. Neither the Vouchers Program nor the Section 8 Certificate Program is a cure for an absence of suitable units in a community. Consequently, some form of a Section 202 or similar housing construction program is necessary to promote the development of additional housing units suitable for indiviuals with disabilities. Moreover, rent subsidies must be set at realistic levels that permit recipients with disabilities to obtain adequate units. Determinations of fair market rents for subsidized housing should take into account cost differentials resulting from special needs of some individuals with disabilities, such as the housing of a person's attendant, particular accessibility requirements, and the desirability of group living arrangements for some persons with disabilities.

C. Community Development Block Grants

The Community Development Block Grant (CDBG) Program provides community and economic development support to cities, counties, Indian tribes, and U.S. territories. The block grant format of the program allows States and localities discretion to choose how to allocate CDBG funds to supplement other available resources. The Administration has emphasized increased local discretion and modifications of the program designed to permit greater use of economic development and private sector involvement.

The largest portion of the CDBG program involves entitlement grants. The entitlement program provides annual grants on a formula basis to entitled communities to carry out a wide range of community development activities directed toward neighborhood

revitalization, economic development, and improved community facilities and services. Entitlement communities develop their own programs and funding priorities and consult with local residents before making final decisions.

All CDBG activities must either benefit low- and moderate-income persons, aid in the prevention or elimination of slums and blight, or address other community development needs that present a serious and immediate threat to the health and welfare of the community. Some of the activities that can be carried out with community development funds include the acquisition of real property; rehabilitation of residential and nonresidential properties; provision of public facilities and improvements, such as water and sewer, businesses to help with economic development activities.

No less than 51 percent of the funds must be used for activities which benefit low- and moderate-income persons, over a period specified by the grantee, but not to exceed three years.

Metropolitan cities and urban counties are entitled to receive annual grants. Metropolitan cities are central cities of Metropolitan Statistical Areas (MSAs) or other cities within MSAs which have populations of at least 50,000. Urban counties are counties located within MSAs which are authorized to undertake community development and housing activities and which meet certain population requirements.

Another CDBG program provides non-entitlement grants for States and small cities to carry out a wide range of community development activities directed toward neighborhood

revitalization, economic development, and improved community facilities and services. Applicants must give maximum feasible priority to activities which will benefit low- and moderate-income families, aid in the prevention or elimination of slums and blight, or address other community development needs that present a serious and immediate threat to the health or welfare of the community. No less than 51 percent of the funds must be used for activities which benefit low- and moderate-income persons over a period specified by the State, but not to exceed three years.

Under 1981 amendments to the CDBG legislation, each State has the option to administer the block grant funds provided for its non-entitlement areas. If this option is exercised, the block grant funds are provided to a State, and it distributes them as grants to eligible units of local government. A State's objectives and methods of distributing the funds are determined in consultation with affected citizens and local elected officials, and must be made available to citizens and units of general local government throughout the State. States are required to report annually on the use of such funds. If the State's option is not exercised, HUD serves as administrator and awards funds in a competition on the basis of selection criteria established by the Department.

$3,468,000 were appropriated for Community Development Block Grants in 1984. For 1985, the estimated figure is $3,472,000. The Administration's proposed budget for 1986 would involve a 10 percent cut in the CDBG program to $3,124,800. Long-range projections would see the program rise to $3,277,900 in 1987;

$3,412,300 in 1988; $3,548,800 in 1989; and $3,680,100 in 1990.

The CDBG program does not explicitly target or mention projects for people with disabilities. But many communities have used CDBG funds for disability-related projects. One noteworthy example is Baltimore County, Maryland, where the County Executive has earmarked 20 percent of CDBG funds for projects to benefit individuals with disabilities. Such funding is provided to grantees by the County in conjunction with the Baltimore County Coalition for Handicapped Persons. Approximately $5 million of CDBG funds have been spent by the County over a four year period for such projects as small residential alternatives for people with disabilities and the removal of architectural barriers. In developing residential alternatives, the County has made relatively small grants, averaging about $28,500 each to private, nonprofit agencies that are required to assume the major financial responsibility for the housing projects. In addition, the County has been able to arrange for some county- and State-owned properties to be leased at nominal rates for use as residences for persons with disabilities. Such an approach appears very much in line with the goals of the CDBG program and the emphasis of the Reagan Administration upon local initiatives and the use of grant funds to leverage private sector involvement.

III. NONDISCRIMINATION AND FAIR HOUSING REQUIREMENTS

In addition to programs for developing additional housing opportunities for persons with disabilities, a major Federal responsibility is to assure that currently available housing opportunities are equally open to individuals with disabilities. The primary means for accomplishing such an objective is through laws prohibiting discrimination on the basis of disability in housing.

A. Lack of Coverage Co-Extensive to the Fair Housing Act

Title VIII of the Civil Rights Act of 1968 (42 U.S.C. sections 3601 - 3619) prohibits discrimination in housing on the basis of race, color, religion, sex, and national origin. The coverage of Title VIII is extremely broad, applying to almost all types of housing with the exception of certain private, single family dwellings, and facilities owned or operated by religious groups and private clubs.

Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. section 794) prohibits discrimination on the basis of handicap only in housing programs or activities of the Federal Government or that receive Federal financial assistance. Compared to the coverage of Title VIII, the housing subject to Section 504 is quite limited. Various bills have been proposed that would provide equivalent coverage of handicap discrimination as that provided under Title VIII, generally by simply adding "handicap" to the types of discrimination prohibited in Title VIII. In his July 12, 1983, message to Congress transmitting proposed Fair Housing legislation, President Reagan called for the extension of such

legislation to protect people with disabilities, and noted that a Congressional consensus in favor of such an expansion of coverage had emerged in the previous session of Congress (President Reagan, 1983, p. 992). An important element of guaranteeing fair housing opportunities for individuals with disabilities is the need to impose a statutory duty upon landlords, developers, and sellers to make reasonable accommodations for tenants and purchasers with disabilities.

B. HUD Implementation of Section 504 of the Rehabilitation Act of 1973

1. Development of Section 504 Regulations. Currently, Section 504 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. section 794) is the only major piece of Federal legislation prohibiting discrimination on the basis of handicap in the housing area. The Department of Housing and Urban Development does not presently have in place regulations to implement the requirements of Section 504. On April 19, 1978, HUD had originally published a Notice of Proposed Rulemaking for public comment on proposed Section 504 regulations. Upon analyzing the comments received, the Department found that both the organizations representing persons with disabilities and the housing industry were critical of the 1978 proposed rule. On May 6, 1983, HUD published regulations in interim final form (republished with corrections on May 18, 1983), to become effective on June 15, 1983. After complaints about the lack of an appropriate public comment period, the Department announced on

June 15, 1983, that the rule was to be considered a proposed rule, with public comments to be accepted until September 6, 1983.

HUD received a total of 1258 comments upon the 1983 proposed rule. According to the Department's analysis of the comments, only 11 of the commenters -- all from the housing industry -- were favorable to the proposed rule. In November of 1984, HUD distributed to disability rights groups and sent to the Department of Justice a revised draft of proposed regulations. Department of Justice officials reportedly asked for some revisions of the rules to correct provisions believed to be particularly unacceptable to persons with disabilities. To date, no final regulations have been issued.

2. Problems With Proposed Regulations. Much of the dissatisfaction with HUD's proposed Section 504 regulations has centered around certain particularly controversial provisions:

a. The "Peaceful Enjoyment" Criteria

Section 8.3, the definitions section of the proposed regulations, contains a definition of the phrase "qualified handicapped persons." One portion of that definition sets out "essential eligibility requirements" that a handicapped applicant must meet to be eligible for HUD-funded housing. One of the stated requirements is that a handicapped person must comply "with all obligations of occupancy, including the obligation to conduct himself or herself in a manner which will not disturb his or her neighbors' peaceful enjoyment of their accommodation and will be conducive to maintaining the housing facility in a

decent, safe and sanitary condition." According to HUD's summary of public comments:

> The basic criticism of this language is that it imposes a double standard because non-handicapped persons are not required to prove that their behavior will not disturb neighbors. Most commenters believe that the inclusion of this language will foster discrimination.

HUD determined that it had received 951 comments on the definition of "qualified handicapped persons;" all but 7 of these comments were critical of the definition. One local housing management company, however, believed that the definition should go even further and require that every handicapped applicant submit a doctor's certificate that he or she can function independently and is not dangerous to society.

HUD's November 2, 1985, revised draft of portions of the proposed regulations attempts to ameliorate some of the criticized impact of the eligibility criteria definition by requiring that admission procedures for handicapped applicants may not differ from the admissions procedures applied to nonhandicapped persons "in such a manner as to screen out, or tend to screen out, handicapped persons, or any class of handicapped persons ..." The draft goes on to permit managers to make "such inquiries as may be relevant" (expressly including inquiries of "such sources as professional staff at hospitals, institutions and related supportive social agencies") to determine whether the handicapped applicant would be "likely to interfere with other tenants in such manner as to diminish their enjoyment of the premises by adversely affecting their health, safety or welfare, or to affect adversely the physical

environment or the financial stability of the assisted housing." To the extent that this formulation continues to apply to applicants with disabilities additional criteria not applied to nondisabled applicants and incorporates a presumption that persons with disabilities are more likely to be disruptive, irresponsible, or dangerous tenants, it appears to be susceptible to the same criticisms as the 1983 version.

b. Coverage of Intentional Discrimination Only

In listing the types of discrimination prohibited, the HUD proposed regulations omitted language in the Department of Justice Implementation Guideline regarding the use of criteria or methods of administration that "have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap." The absence of coverage of unintentional discrimination in housing has been strongly criticized. HUD reported that the 942 commenters addressing the issue were critical of the omission. The failure to prohibit "effects" discrimination is also contrary to the subsequent decision of the United States Supreme Court in the case of Alexander v. Choate (105 S.Ct. 712 (1985)), which held that Section 504 condemns unintentional as well as intentional discrimination.

c. Percentage of New Construction Required To Be Accessible

Section 8.22 of the proposed regulations sets out accessibility requirements for newly constructed HUD-assisted housing. It requires that 5 percent of the units in a project be made accessible for persons with mobility impairments, and that 2

percent be made accessible for people with vision or hearing impairments. Housing developers may request a waiver of these requirements by showing that the percentages exceed the need for such housing in a particular locale. HUD may impose higher percentage requirements upon the request of a State or local government and a demonstration of need, but in no case may the requisite percentage exceed 15 percent.

According to HUD analysis of the comments received, most commenters believed that the percentage figures set for accessible housing were inadequate. Commenters disagreed with the 5 percent requirement for mobility impairment accessibility, the 2 percent figure for visual and hearing impairments, and the overall 15 percent cap. Numerous commenters, including the American Association of Retired Persons and the National Gray Panthers along with disability organizations, argued that 100 percent of newly constructed housing units should be accessible or adaptable. HUD's summary of the comments of the National Gray Panthers, for example, included the view that the percentages for accessibility in the proposed regulations disregard data showing that impairments increase with advancing age and that non-disabled people may become disabled during the course of their tenancies. "If units were required to be adaptable to meet the needs of a variety of disabilities, the distinction between the housing needs of eligible handicapped and eligible non-handicapped persons would fade." A group of 161 comments in favor of 100 percent accessibility or adaptability in newly constructed units argued that doing so would add only 1 percent to the total cost of the units.

d. Accessibility Requirements For Alterations

Section 8.23 of the proposed regulations provides that a facility to be altered must be made accessible if it contains 25 or more units and if the cost of the alterations is 75 percent or more of the replacement cost of the completed facility. According to the HUD summary of public comments, "Most of the comments on this section state that the 75 percent or more of replacement cost threshold for triggering the accessibility requirements ... is too high." Many of the commenters pointed out that a 50 percent figure is commonly used by other agencies and in State laws. Commenters also asserted that fair market value of the facility rather than replacement cost of the completed project should be the pertinent amount considered, since replacement cost is almost always much higher than the market value of a building.

e. Public Housing Accessibility

Section 8.24 of the proposed regulations sets accessibility standards for public housing. HUD reported that most commenters do not feel the section goes far enough in providing accessibility in public housing. Section 8.24(c) states that public housing projects shall not be required to make more than five percent of the units in any modernization project accessible. Many of the commenters criticized the five percent ceiling, particularly in light of the 15 percent cap proposed for other HUD housing. One group of commenters pointed out the irony of having a lower accessibility ceiling for public housing when

data indicate that disabled tenants living in HUD projects are disproportionately indigent: "it is incongruous to require fewer accessible units in a public housing project than in HUD housing for tenants who are able to pay some portion of the rent."

3. Complaints of Handicap Discrimination Filed With HUD. Although HUD does not have in effect any final regulations for the implementation of Section 504, the Department has received many complaints of housing discrimination in violation of Section 504. In fact, HUD has been receiving more complaints under Section 504 than all other types of discrimination complaints combined. For 1984, 206 complaints of discrimination under Section 504 were filed with the Department.

In the absence of regulations, HUD has made efforts to process and be responsive to complaints of handicap discrimination. To assist HUD personnel in understanding and dealing with housing issues affecting people with disabilities, the Office of HUD Program Compliance, Fair Housing and Equal Opportunity has distributed a Disability Issues Trainer's Manual. This manual provides instruction and guidance on dealing with issues of discrimination in housing.

Unfortunately, HUD efforts on disability issues are hampered by the absence of any adequate administrative focus for such efforts. There are no appropriately organized, placed, and staffed units charged with dealing with such issues on an ongoing basis, and providing sufficient administrative leverage, coordination, and follow through. Units specializing in disability would be advantageous both within HUD's Fair Housing

and Equal Opportunity Division (to guide the enforcement of Section 504 and other legal and regulatory requirements) and within the Office of Policy Development Research (to provide input to HUD disability policy direction).

C. Zoning Restrictions

A major area of discrimination against persons with disabilities that has not yet been addressed in Federal laws concerns local zoning ordinances that have sometimes been used to prevent group homes and other housing alternatives from locating in residential neighborhoods. Unwarranted fears and inaccurate stereotypes have sometimes led neighbors and zoning authorities to oppose group living arrangements for persons with disabilities in particular residential areas. Local zoning ordinances have been used as barriers to prevent the establishment of various housing programs for people with disabilities. Such situations have resulted in numerous court cases and appeals, culminating in a number of judicial decisions generally in favor of the housing units for persons with disabilities. Recently, one such case, City of Cleburne, Texas v. Cleburne Living Center (105 S.Ct. 3249 (1985)), was appealed all the way to the United States Supreme Court. The Court ruled that opposition to the group home for mentally retarded people at issue in the case was based on "an irrational prejudice against the mentally retarded" (105 S.Ct. at p. 3260), and declared that "mere negative attitudes, or fear, unsubstantiated by factors which are properly cognizable in a zoning proceeding, are not permissible bases for treating a home for the mentally retarded differently from apartment houses,

multiple dwellings, and the like" (Id. at p. 3259). Several states have passed laws prohibiting local zoning restrictions from being interposed to block alternative living programs for individuals with disabilities.

To prevent the need for a case-by-case court battle whenever neighbors object to a residential program for persons with disabilities, a Federal prohibition of discriminatory zoning ordinances is needed. A partial model for such a provision is provided by Section 815 of Title VIII of the Civil Rights Act (42 U.S.C. Section 3615). That Section declares State or local laws requiring or permitting housing discrimination invalid to the extent that they are inconsistent with the requirements of Title VIII; the laws are not themselves struck down, but their application is invalidated whenever it constitutes discrimination prohibited by Title VIII.

A similarly worded statute could prohibit, as unlawful discrimination, any application of local zoning ordinances to prevent the establishment or operation of alternative living arrangements for persons with disabilities in residential zones. Such a law would provide a Federal overriding of local zoning laws to the extent that they require or permit the discriminatory use of zoning restrictions to eliminate appropriate housing options for citizens with disabilities.

IV. COSTS AND BENEFITS

As the previous sections have indicated, two major efforts of the Federal Government to promote the availability of appropriate housing opportunities for people with disabilities are equal housing opportunity laws and housing construction and rent subsidy programs. Such initiatives may be justified on the basis of purely humanitarian concerns that disabled persons be afforded minimally adequate shelter and an equitable chance to pursue housing opportunities. In addition to such considerations of equity and basic human rights, the Council has also examined the costs and potential benefits of such efforts to secure opportunities for appropriate housing for people with disabilities. Although available data are not precise, current reliable estimates strongly suggest that efforts to promote appropriate housing for individuals with disabilities make economic as well as humanitarian sense.

Equal housing opportunity laws impose a duty upon landlords and developers covered by these laws not to discriminate against persons with disabilities. To the extent that this simply requires the cessation of discriminatory admission standards, rules, practices, or attitudes, it does not cost anyone any money, and would clearly be economically beneficial insofar as it enhances the independence and self-sufficiency of persons with disabilities.

In the Council's view, equal housing opportunity laws should also require the architectural accessibility of all housing constructed in the future that is subject to these laws. This

latter requirement will involve some costs, but, according to studies, relatively small ones. A 1979 report published by the U.S. Department of Housing and Urban Development, The Estimated Cost of Accessible Buildings, provides the most authoritative study of accessibility costs. It contains cost estimates for achieving accessibility in various types of buildings, including high rise towers, garden apartments, and single family dwellings. Figures are provided on the costs of making structures either adaptable or adapted for housing persons with disabilities. Adaptable housing, for purposes of the study, means that it satisfies housing adaptability standards of the American National Standards Institute (ANSI), which require that a dwelling unit be basically accessible and easy to convert to full accessibility through such means as removing two base cabinets under counters in the kitchen and installing grab bars in the bathroom for people who need these features (particularly wheelchair users). Costs of adapted housing includes the additional cost for adapting a residential unit by removing the cabinet fronts, installing grab bars, etc. (HUD, 1979, #2, p.5). The study found the costs of incorporating accessibility in the design and construction of residential structures to be as follows:

Type of Building	Adaptable	Adapted
High Rise Tower	0.98 percent	1.6 percent
Garden Apartments (to make all ground floor units accessible)	0.59 percent	.93 percent
Single Family House	2 percent	3 percent

(HUD, 1979, #2, pp. 34, 57, 66)

The relatively small costs of accessibility in new construction have been confirmed in other studies. In a 1982 publication, the Architectural and Transportation Barriers Compliance discussed several such studies, and quoted findings of one-half of one percent and one-tenth of one percent as the cost of accessibility features in new buildings (About Barriers, p. 5). A 1975 Report to Congress prepared by the General Accounting Office concluded that "the additional cost for accessibility features included in the original construction program may only be one-tenth of 1 percent of total construction cost" (GAO, 1975).

Given the small proportion of these costs compared to overall project costs, it is not an egregious burden to expect that accessibility should be built into all construction funded by HUD or subject to Fair Housing Laws. And from a governmental and societal perspective, such costs are offset by benefits that accrue from reducing dependency costs and increasing opportunities for productivity and independence for individuals with disabilities. Another HUD study published in 1979, A Cost-Benefit Analysis of Accessibility, presented a cost-benefit analysis of the removal of architectural barriers from residential and nonresidential buildings. The study found that "The net benefits attributable to the removal of architectural barriers are, in most cases, very large" (HUD. 1979, #1, p. 67).

Likewise, it appears that Federal programs providing subsidies for the construction (i.e., Section 202) or rental (i.e., Section 8 and the Voucher program) of housing for persons with disabilities are economically beneficial to the nation, when

one considers that the alternative to securing adequate housing options for persons with disabilities is the costly institutionalization of such persons and the continuation of federally underwritten dependency costs. The Digest of Data on Persons with Disabilities, published by the Congressional Research Service in 1984, estimates that 1.3 million Americans reside in nursing homes, 232,340 in inpatient mental health facilities, and 152,000 in public residential facilities for mentally retarded persons (CRS, 1984, pp. 10, 14, 16). The results of a Survey of Institutionalized Persons conducted by the Bureau of the Census in 1976 found that 1,550,120 persons were in long term residential care facilities, including: facilities for mentally retarded persons (189,210); facilities for physically handicapped persons (37,780); children's facilities (43,790); psychiatric institutions (65,400); nursing homes (1,182,670); and other facilities (31,270) (U.S. Bureau of the Census, 1976, p. 108).

There are no precise statistics indicating what proportion of this institutionalized population could reside in the community if appropriate housing were available. Information obtained at consumer forums conducted by the Council suggests that the number of such situations is sizeable. Anecdotal examples include:

o The young man with a spinal cord injury and resulting quadriplegia who continues to reside in a hospital many months after his medical release would have been warranted solely because he cannot find any accessible housing in his local

community.

o The mentally retarded young woman who is kept in a State institution year after year, even though she has been evaluated as capable of living in the community, because no community group home residence is available.

o The former mental patient whose attempts to reestablish an independent life are frustrated by the refusal of landlords in her local community to rent her an apartment.

o The deaf man whose ability to earn a living and live independently depend upon his taking a promising job offer, but who cannot find any affordable housing within a reasonable proximity of the job (and several owners of suitable units have refused to rent to him).

o The low-income couple, each with cerebral palsy, who have been unable to secure housing in public housing projects and are forced to stay in a federally funded State institution.

For those individuals who could live in the community if they are able to obtain appropriate housing, the potential savings of Federal dollars are dramatic. Depending upon geographical location, it costs between $30,000 and $110,000 per year for each individual who is elderly and/or disabled to be housed in federally-funded facilities. This should be compared with the average expenditure of $7,121 per year for a Section 8 certificate in a Section 202 project. And the current $50,000 per unit allocation for Section 202 construction is comparatively quite small considering that it may provide a housing unit suitable for persons with disabilities for thirty or forty years or more. When compared with the alternatives of long-term

institutionalization and Federal dependency entitlements, the expenditures necessary to secure appropriate housing opportunities for persons with disabilities can be seen to be money well spent. And this is without even considering the difficult-to-estimate returns that result whenever an individual with a disability is permitted to live in the community and becomes an economic contributor by earning money, paying taxes, and purchasing goods and services.

1. Congress should prohibit housing discrimination against persons with disabilities on as broad a basis as race, color, religion, sex, and national origin discrimination are prohibited under Title VIII of the Civil Rights Act of 1968.

Recognizing that one of the nation's largest minorities -- that of persons with disabilities -- is omitted from the coverage of the Fair Housing Act, the Council recommends expanding coverage of housing nondiscrimination requirements to protect persons with disabilities. This may be accomplished either by amending Title VIII of the Civil Rights Act of 1968 to include "handicap" or by enacting a separate law (for further discussion, see the Council's recommendations on "Equal Opportunity Laws"). President Reagan has called for expansion of Fair Housing legislation to protect people with disabilities, and has noted an apparent Congressional consensus in favor of such an expansion of coverage (President Reagan, Message to the Congress Transmitting Proposed Fair Housing Legislation, July 12, 1983, p. 992).

Such a prohibition should make clear that developers, landlords, and real estate management companies may be required to make reasonable accommodations for individuals with disabilities. It should also encompass a requirement of compliance with full accessibility standards as described in Recommendation 2 below. The statutory prohibition of discrimination in housing should declare local zoning ordinances invalid to the extent that they prevent the establishment or

operation of community residential alternatives for people with disabilities in all housing covered by Title VIII.

2. Congress should require that all housing units constructed or substantially altered with Federal financial assistance, Federal loans, Federally subsidized or insured loans, or by agencies of the Federal Government, should be required to meet accessibility standards.

In light of data indicating that such modifications entail a very small percentage of costs of new housing, Federal agencies should implement a plan and develop regulations requiring that all housing units be adaptable, based upon Uniform Federal Accessibility Standards now in effect under the Architectural Barriers Act of 1968. These standards provide technical specifications for a universally accessible floor plan, e.g., level or ramped entrances, wide doors, lower outlets and heating controls, accessible bathrooms with reinforced walls, accessible kitchens, and lower door knobs and locks. Pursuant to analysis of the costs of the modifications, and pursuant to minimum guidelines that should be established by the Architectural and Transportation Barriers Compliance Board, requirements for adaptability in housing may also impose additional requirements for modifiable accessibility, such as adjustable shelves in closets, and warning devices and flashing lights for people with hearing impairments. This type of universally accessible housing unit would be easily modified to meet the individual needs of a person with a disability. Specific standards for applying such accessibility requirements should be developed with input from the National Council on the Handicapped, representatives of the housing construction industry, such as the National Association

of Home Builders, and organizations of persons with disabilities. HUD should chair a Federal interagency committee to assist and coordinate the development of accessible housing units under the jurisdiction of other Federal agencies, consistent with minimum guidelines established by the Architectural and Transportation Barriers Compliance Board.

Accessible housing is not only an urgent present need for citizens who currently have disabilities, but, as the U.S. population becomes increasingly older with the maturing of the baby boom generation, accessible housing will become increasingly more important for the growing population of elderly citizens. Statistics are clear: many Americans who do not now have disabilities will incur disablities in their later years and will find themselves searching for accessible housing. Imposition of an adaptability requirement on housing construction today is one important step toward addressing the growing need for such housing in the future.

3. Congress should direct the Department of Housing and Urban Development that programs to provide rent subsidies for persons with disabilities through both Section 8 certificates and the housing voucher program should be made permanent and given a high priority.

The Administration-endorsed voucher program, initiated as a demonstration project, has proven to be an effective vehicle for providing persons with disabilities the opportunity to select their own places of residence. In addition, the traditional Section 8 certificate program continues to serve an important purpose in assisting disabled people by providing rent subsidies. The Section 8 New Construction program is a major financial

incentive for developers to construct Section 202 housing for disabled persons. Twenty percent of all Section 8 certificates should be set aside for persons with disabilities. HUD should clarify maximum rent criteria under Section 8 to uniformly permit persons with disabilities to share apartments with others. Income eligibility criteria for Section 8 certificates and vouchers should be based upon actual net income of applicants with disabilities after the deduction of disability-related expenses.

4. Congress should direct the Department of Housing and Urban Development to reorganize the Section 202 program to provide a range of housing options for persons with disabilities, and to include a program of demonstration grants to agencies such as Independent Living Centers to develop model housing options, including transitional living programs, group residences, and other alternatives.

The Administration has recognized that private production may not be sufficient to meet the housing needs of elderly people and persons with disabilities (HUD, 1984, p. 61). Consequently, Section 202 or a similar federally funded program is needed to stimulate the construction of additional housing units for people with disabilities. The traditional Section 202 program, however, has engendered certain problems, such as isolation of people with disabilities, and lack of age-appropriate social integration. As HUD is reconsidering the structure and goals of the Section 202 program during the current moratorium on Section 202 construction, the program should be reorganized to provide several different types of housing options for people with disabilities. These would include group homes and other disability-specific residential programs for persons

needing supervised supportive living environments, as well as integrated housing in the community for the majority of persons with disabilities who do not need such supervised support.

All housing constructed under such a program should meet general standards of accessibility, as discussed in Recommendation 2 above. The developer/management of such a project should be required to provide tenants with disabilities the option of being interspersed with nondisabled tenants. Tenants with disabilities should also be integrated with other tenants on an age-appropriate basis.

A HUD program should be established to initiate demonstration projects to provide funds to agencies such as Independent Living Centers to develop model housing options for future HUD construction funding. Such housing alternatives, including transitional living programs, group residences, and other arrangements, will provide alternative models to the traditional Section 202 high-rise apartment buildings, and stimulate more appropriate housing opportunities for citizens with disabilities and elderly persons.

These recommendations do not necessarily contemplate any increase in funding of the Section 202 program, but rather a reallocation of the uses made of Section 202 funds at current spending levels.

5. Offices responsible for disability issues should be established within HUD's Fair Housing and Equal Opportunity Division and within the Office of Policy Development and Research.

These two offices would provide much needed administrative focus on disability-related issues within the Department. The

former would serve to guide the enforcement of Section 504 and other legal and regulatory requirements, while the latter would provide important input to HUD disability policy direction.

6. Congress should direct HUD to issue appropriate regulations for the implementation of Section 504 of the Rehabilitation Act of 1973.

A timeline should be imposed for the issuance of Section 504 housing regulations. HUD should be directed to involve disabled individuals, the National Council on the Handicapped, and disability organizations in the process of developing and issuing such regulations. Such regulations should not permit the imposition upon housing applicants with disabilities of any standards or criteria, such as neighbor attitudes or apartment maintenance, unless such criteria are necessary, nondiscriminatory, and are imposed upon all tenants. HUD's regulations should provide that recipients of HUD funds are prohibited from unintentional as well as intentional discrimination on the basis of handicap. Recipients should be required to assure that practices, procedures, and facilities do not inadvertently exclude or disadvantage tenants or potential tenants with disabilities. The regulations should also require compliance with accessibility requirements as set out above in Recommendation 2 above.

7. Additional programs should be initiated to leverage existing private sector funding and to provide incentives and financial resources for the development of housing opportunities for people with disabilities.

Federal Housing Administration (FHA) and other governmental and private housing loan funds should be equally available to persons with disabilities. Federal housing loan programs whose eligibility criteria include income level ceilings should reflect actual net income after the deduction of disability-related expenses.

Rather than focusing on making and administering housing loans, HUD should be authorized to "buy down" interest rates on loans offered and administered by private financial institutions. Other incentive programs should include:

a. Expanding the existing Federal income tax deduction for the removal of architectural barriers, including increasing the amount eligible for deduction;

b. Instituting low-interest loans or loan guarantee programs to provide people with disabilities who are eligible for rent subsidies the option of purchasing a comparable home, thus reducing the long-term need for rent subsidies; and

c. Establishing low-interest loan programs or tax incentives to encourage private sector construction of single-family housing, cooperatives, and condominiums for individuals with disabilities.

These proposals reflect the fact that the average annual per unit expenditure for rent subsidies in 1985 amounted to $6,459 in

Section 202 facilities; $4,659 under Section 8 existing certificates; and $3,404 under the voucher system. Such amounts of money could be used to provide interest subsidies that would enable eligible individuals with disabilities to purchase homes at low interest rates, and to eventually cease needing any housing subsidy.

8. HUD and the private sector should be encouraged to develop training grants, supplemental teaching positions, awards, and other innovative programs for promoting architectural planning that incorporates the concept of universal accessibility.

Aspiring architects and planners should be provided the training necessary to enable them to develop innovative designs implementing universal accessibility in new and rehabilitative construction. Such innovations may dramatically transform the design and construction of housing, public and private buildings, schools, work places, and public transit systems, and eliminate environmental barriers to elderly persons and people with disabilities.

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